

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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COLONIAL GAS COMPANY) D.T.E. 98-68

DEMAND SIDE MANAGEMENT ("DSM"))

PROGRAMS)

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RESTATED SETTLEMENT AGREEMENT

Colonial Gas Company ("Colonial"), the National Consumer Law Center, Inc. ("NCLC") representing Community Teamwork, et al., and Settlement Intervention Staff ("SIS") appointed by the Department of Telecommunications and Energy (the "Department") hereby agree, as provided herein and subject to approval of the Department, to resolve all issues relating to Colonial's request for approval of (i) demand side management programs ("DSM") for the period from September 1, 1998 through August 31, 2000 (or December 31, 2001, if the merger of Colonial and Eastern Enterprises is consummated — See p. 3) and (ii) market transformation programs for the period September 1, 1998 through August 31, 1999.

I. BACKGROUND

On July 7, 1998, Colonial submitted for Department approval a two-year Demand Side Management and Market Transformation Program and Budget for the period September 1, 1998 through August 31, 2000. The July 7th filing consisted of two components: (a) the proposed continuation of Colonial's subsidy-based DSM program for low-income households (which had been shown to be cost-effective in *D.P.U. 91-150*, *D.P.U. 94-105* and *D.P.U. 96-18*); and (b) the proposed implementation of so-called "market transformation" programs for other customers based on the work of the DSM/Market Transformation Collaborative ("Collaborative").¹

On August 20, 1998, the Department held a public hearing and a procedural conference and adopted a procedural schedule. The Company, the Attorney General of the Commonwealth of Massachusetts ("AG") and NCLC, as intervenors, attended. SIS was appointed on August 21, 1998 and the parties held settlement conferences or teleconferences on September 3, September 10, September 14, September 24, October 1,

October 15 and October 23, 1998. Issues discussed in settlement have included possible coordination of the Company's low-income DSM program with the efforts of the low income weatherization and fuel assistance program network, DSM program cost-effectiveness and recovery of incentives for conducting a market transformation program. The deadline for settlement had earlier been extended from September 30, 1998 to October 30, 1998. By letter dated October 29, 1998, Settling Parties requested the settlement deadline be again extended, this time to November 30, 1998. This request was granted by Memorandum of the Hearing Officer dated November 4, 1998.

On October 19, 1998, Colonial and Eastern Enterprises (owner of Boston Gas Company) jointly announced that a merger agreement had been approved by both companies' boards, subject to the receipt of satisfactory regulatory approvals and the requisite approval of their respective shareholders (the "Merger"). If such approvals are obtained, the companies anticipate that the Merger would be completed by mid-1999.

II. TERMS OF RESTATED SETTLEMENT

A. Low-Income DSM Program. For the period (the "Interim Period") September 1, 1998 until the earlier of (i) the date three months after the Department's decision in the proceeding seeking approval of the Merger, (ii) the date of the consummation of the Merger, or (iii) August 31, 1999, Colonial shall continue its existing low income DSM program as described in the filing, and expend and be able to recover up to \$40,000 per month in connection therewith.² This expenditure limit is consistent with Colonial's historic level of expenditures on its low income DSM program. During the Interim Period, Colonial agrees to direct its low income DSM program administrator, Mass Save, Inc., to assign to CTI of Lowell and HAC of Hyannis, 100 (50 each) of the 400 low income households targeted to be served during the period. CTI of Lowell and HAC of Hyannis shall deliver measures to such households in accordance with the provisions of Colonial's existing low income DSM program.

In the event the Merger is consummated, the Company shall discontinue its existing low income DSM program and coordinate its DSM efforts to reach low income households with the efforts of Boston Gas Company by adding \$400,000 (as set forth in the budget outlined in Attachment A) per calendar year (pro-rated for the 1999 calendar year) through December 31, 2001 to the Boston Gas Company Low-Income DSM Program approved by the Department in *D.T.E. 96-50* and administered by Action, Inc. Provided said amounts added by Colonial to the

Boston Gas Company Low-Income DSM Program are expended in accordance with the terms and conditions of said Program, then said amounts (up to \$400,000 per calendar year, pro-rated for the 1999 calendar year) shall be recovered.

If the Department renders a decision on the request for approval of the Merger that is unfavorable to Colonial and Eastern and the Merger is not consummated or if no Department decision on the Merger is rendered by August 31, 1999, Colonial agrees to enlist CTI of Lowell, HAC of Hyannis and/or such other member of the low income weatherization and fuel assistance program network as may be mutually agreed to with NCLC, to be the program administrator for its low-income DSM program through August 31, 2000 (the measures thereunder to be substantially similar to Colonial's current program, plus air sealing and heating system repair measures, with such changes as can be shown to be cost-effective, and the recoverable expenditures therefor to be \$400,000 per calendar year, pro-rated for the remainder of the 1999 calendar year).

B. Market Transformation Program. In order to enable Colonial to continue to participate in the Massachusetts Gas DSM/Market Transformation Collaborative pending the outcome of the Merger, Colonial may expend and recover up to \$355,000 for the delivery of certain market transformation program measures (as set forth in the budget outlined on Attachment B) during the period from September 1, 1998 until the earlier of (i) the date three months after the Department's decision in the proceeding seeking approval of the Merger, (ii) the date of the consummation of the Merger, or (iii) August 31, 1999. In exchange for pre-approval of such expenditures, Colonial has agreed to forego any recovery of incentives or LBR associated with such market transformation program measures during said period; provided, however, that Colonial is in no way waiving its rights to seek incentives or LBR recovery with respect to any future market transformation programs or other DSM programs.

Upon consummation of the Merger, Colonial shall coordinate its market transformation efforts with the market transformation efforts of Boston Gas Company.

During the period from September 1, 1998 until the earliest of the three triggering dates stated above, to the extent the Department determines any of the market transformation programs listed on Attachment B are not cost-effective, Colonial agrees to phase out such programs as soon as practicable.

C. General. All expenditures by Colonial in accordance with the provisions in paragraphs A and B above related to its low-income DSM and market transformation programs are pre-approved as recoverable through Colonial's Conservation Charge of the Company's Local Distribution Adjustment Clause ("LDAC"). Colonial may expend, and seek the recovery of, funds for its programs during said periods in addition to the pre-approval amounts set forth in paragraphs A and B above if, in its discretion, it determines that such additional expenditures would be cost-effective and in the best interests of Colonial, its programs and its ratepayers; provided, however, that the AG, NCLS and SIS shall not be bound to support the recovery of such additional expenditures, unless in their respective discretions, Colonial has shown the cost-effectiveness of such additional expenditures. Colonial states that its low-income DSM and market transformation program will be conducted in accordance with 220 C.M.R. 12.00 et seq., *Standards Of Conduct For Distribution Companies and Their Competitive Affiliates*, including with respect to affiliate involvement with the provision of DSM-related projects.

III. CONDITIONS OF RESTATED SETTLEMENT

A. This Restated Settlement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in this proceeding is true or false.

B. Other than as expressly stated herein, the acceptance of this Restated Settlement shall not in any respect constitute a determination by the Department as to the merits of any allegations, contentions, or issues made in this or any subsequent proceeding.

C. This Restated Settlement is expressly conditioned upon the Department's approval of all provisions herein, without change or condition, by no later than December 31, 1998.

D. The discussions (including workpapers, documents, etc. produced in connection therewith) which have produced this Restated Settlement have been conducted with the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, and shall be without prejudice to the position of any party presenting such offer or participating in any such discussion, and are not to be used in any manner in connection with these or other proceedings involving any of the parties to this Restated Settlement or otherwise.

E. This Restated Settlement is submitted on the condition that, in the event the Department does not approve of it in its entirety by December 31, 1998, it shall be deemed withdrawn and void and shall not constitute any part of the record in this proceeding or be used for any other purpose.

F. This Restated Settlement constitutes the entire agreement between the parties regarding the subject matter hereof. All previous agreements, discussions, communications, and correspondence regarding the subject matter hereof are superseded by the execution of this Restated Settlement.

COLONIAL GAS COMPANY

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Dated: December 8, 1998

H:DPU/98-68/SETAGREE